

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER

IN

S.B. Civil Second Appeal No.587/2006

Gheesalal S/o Shri Nathu Ram

...defendant-appellant

Versus

Sitaram so-called adopted S/o Janki Prasad

and others

...plaintiff-respondents

Date of Order ::: 13.12.2006

Present

Hon'ble Mr. Justice Narendra Kumar Jain

Shri M.M. Ranjan, Counsel for defendant-appellant

Shri Pratap Singh Arya, Counsel for plaintiff-respondents

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By the Court:-

Heard learned counsel for the parties.

The plaintiff-respondents filed a suit for possession, mesne profit and permanent injunction in respect of the disputed property in the lower court. The lower court partly decreed the suit in respect of possession but no decree was passed in respect of mesne profit, as prayed in the plaint. Being aggrieved with the same, the plaintiffs as well as defendant, both, preferred two separate appeals.

The first appellate court dismissed the appeal of the defendant and affirmed the finding of the lower court in respect of the decree for possession. The first appellate court also allowed the appeal of the plaintiffs in respect of mesne profit and passed a decree of mesne profit at the rate of Rs.1000/- per

month, from the date of decree of the lower court i.e. 2nd March, 2002. Hence, this second appeal has been preferred on behalf of the defendant challenging the finding relating to possession as well as mesne profit awarded by the first appellate court.

I have heard learned counsel for both the parties and after considering their submissions in the light of judgment and decree passed by both the courts below I find that controversial issue in the present case is about issue no.1 relating to decree of possession, which is purely a question of fact and there is concurrent finding of fact by both the courts below, which cannot be interfered with by this court in second appeal under Section 100 of the C.P.C.

So far as grant of decree in respect of mesne profit by the first appellate court at the rate of Rs.1000/- per month is concerned, the learned counsel for the respondents has frankly contended before this court that the plaintiffs shall not execute the decree of mesne profit as awarded by the first appellate court vide judgment dated 23.8.2006.

No substantial question of law is involved in this second appeal.

Consequently, the second appeal is partly allowed. The judgment and decree passed by both the courts below in respect of suit for possession and permanent injunction is affirmed but the decree of mesne profit as granted by the first appellate court is set aside in view of the concession given by the learned counsel for the plaintiff-respondents.

(Narendra Kumar Jain) J.

//Jaiman//